

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

United States of America,

Plaintiff,

Case No. 18-20495

v.

Hon. David M. Lawson

Ibraheem Izzy Musaibli,

Defendant.

/

**Response to Government's Motion to Preclude "Withdrawal" Defense**

The Government has moved to preclude the defense of "withdrawal" at trial.

The Government misapprehends the relevance of evidence that, regardless of its argument that Defendant joined the charged conspiracy, Defendant clearly was not supporting it at later points in time.<sup>1</sup> Counsel does not proffer "withdrawal" as a legal defense to the conspiracy charge. Rather, and again regardless of the Government's evidence that it claims shows joinder in the conspiracy, evidence that Defendant rejected ISIS and resisted it in action (or inaction) and words is relevant at trial in various other ways.

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<sup>1</sup> The defense is not conceding that Defendant joined the charged conspiracy. In this regard, see, e.g., the separate response to the Government's motion to prohibit the defense of duress.

In attempting to prove its case that Defendant was in cahoots with ISIS at various times between 2016-2018, the Government has advised counsel that it will introduce statements that it claims Defendant made, documents that it claims show Defendant's complicity at those points in time, and experts to suggest what those statements and documents mean in the larger context of ISIS domination. Evidence offered to rebut those claims and suggestions, which demonstrate Defendant's opposition to IS and his disengagement and even his imprisonment for that disengagement, certainly is relevant to the jury's consideration of the Government's evidence. It also is relevant to the jury's consideration of Defendant's claims of duress.

Furthermore, to the extent the Government seeks to bootstrap its conspiracy proofs on acts by ISIS after Defendant clearly was seeking his way out, it is the Government's proofs which are an overreach, and it is Mr. Musaibli's evidence of disengagement from, even hostility toward, ISIS which is relevant. There is no ground on which the Government can suggest otherwise.

In conclusion, the defense does not offer "withdrawal" as an affirmative defense to the conspiracy count in the indictment. Rather, the defense proposes to use evidence of Mr. Musaibli's rejection of and disengagement from ISIS to rebut Government evidence that ISIS actions should be attributable to him, or otherwise

support the Government's proofs regarding Defendant's alleged complicity with ISIS.

Submitted,

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Dated: December 12, 2022

### **Certificate of Service**

I certify that on December 12, 2022, I filed:

Response to Government's Motion to Preclude "Withdrawal" Defense through the court's docketing system, which should send notification to opposing counsel of record.

/s/ John A. Shea  
John A. Shea